

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Barrington Kirksville License LLC	)	MB Docket No. 12-151
KTVO, Kirksville, Missouri (21251)	)	CSR-8648-S
	)	
Petition for Waiver of Section 76.92(f) of the	)	
Commission's Rules	)	
_____	)	

**OPPOSITION OF LISCO TO PETITION FOR SPECIAL RELIEF**

Local Internet Service Company, Inc. ("LISCO"), by its undersigned attorneys, and pursuant to Section 76.7(b)(1) of the Commission's rules,<sup>1</sup> submits this Opposition to the Petition for Special Relief filed in the above-captioned proceeding by Barrington Kirksville License LLC, licensee of television station KTVO, Kirksville, Missouri (Facility ID 21251) ("KTVO").<sup>2</sup> In its Petition, KTVO requests a waiver of the significantly viewed exception to the network nonduplication rule set forth in Section 76.92(f)<sup>3</sup> so that it may enforce its exclusivity rights on cable systems serving Bloomfield and Fairfield, Iowa.<sup>4</sup> LISCO files this Opposition for the limited purpose of excluding small cable operators in the Fairfield, Iowa community from the waiver requested in the Petition. As further detailed below, LISCO is a cable service provider serving fewer than 1,000 subscribers in Fairfield, Iowa. As such, pursuant to Section 76.95(a), LISCO is exempt from the FCC's nonduplication rules, and the Commission should deny

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<sup>1</sup> 47 C.F.R. § 76.7(b)(1).

<sup>2</sup> On June 25, 2012, LISCO submitted a consent motion for extension of time in which to respond to the Petition. See E-Mail from T. Lee to S. Broeckaert, June 25, 2012. The Bureau granted LISCO's request for additional time until July 13, 2012. See E-mail from S. Broeckaert to T. Lee, June 25, 2012. Accordingly, this Opposition is timely filed.

<sup>3</sup> 47 C.F.R. § 76.92(f).

<sup>4</sup> Petition at 2.

KTVO's petition to the extent that the waiver request is deemed to apply to small cable providers such as LISCO.

## **I. BACKGROUND**

LISCO is a competitive local exchange carrier and competitive cable TV provider in Fairfield, Jefferson County, Iowa. LISCO operates its own fiber-to-the-home network in the Fairfield community. The company provides video service to approximately 400 subscribers. Petitioner KTVO is a dual ABC and CBS affiliate that broadcasts and operates from Kirksville, Missouri. Both KTVO and LISCO are in the Kirksville-Ottumwa DMA.

LISCO currently carries ABC-affiliated station KCRG, Cedar Rapids, Iowa (Facility ID 9719), and CBS-affiliated station KGAN, Cedar Rapids, Iowa (Facility ID 25685), which duplicates programming broadcast by KTVO. Until 2011, LISCO offered its customers all of the programming from KCRG, KGAN, and KTVO through retransmission consent arrangements. However, those stations more than doubled their retransmission prices for 2012. As a result of the high cost of offering duplicative programming on a small cable system, LISCO decided to retransmit the Cedar Rapids stations exclusively. That decision made the most sense due to LISCO's customer demographics. KTVO is located in Kirksville, Missouri, which obviously serves a different core television market viewing audience than Fairfield, Iowa. LISCO removed KTVO from its channel lineup because the local programming provided by KCRG and KGAN in the Cedar Rapids, Iowa market is more relevant to Fairfield residents than that provided by KTVO to the Kirksville, Missouri market. This is particularly true given that Kirksville has little or no commercial or cultural nexus with Fairfield. Simply put, LISCO's video service

subscribers prefer the local programming from Cedar Rapids over that from Kirksville due to the Iowa-centric focus of the Cedar Rapids stations.<sup>5</sup>

Furthermore, carrying the Cedar Rapids stations was also the best choice from a signal quality standpoint. Contrary to KTVO's assertion, the Cedar Rapids stations are not "distant signals of out-of-market ABC-affiliated . . . and CBS-affiliated" stations.<sup>6</sup> Cedar Rapids is, in fact, only one mile farther from Fairfield than Kirksville, and a large portion of the Cedar Rapids metro area is much closer to Fairfield than all of Kirksville. Unlike the KTVO signal, which LISCO must pick up on a tower, and which LISCO has had significant reception problems due to the distance involved, both KCRG and KGAN are readily available on fiber through Iowa Network Services.

It appears that KTVO may be seeking to force cable companies to enter into retransmission consent agreements by becoming the exclusive provider of ABC and CBS-affiliated programming in Bloomfield and Fairfield. It is LISCO's understanding that the network affiliation agreements for KCRG and KGAN would preclude those stations from providing programming to LISCO should those stations no longer be considered significantly viewed in Fairfield. Grant of KTVO's requested waiver of the significantly viewed exception in Section 76.92(f) would deprive Iowans in Fairfield of their preferred broadcast programming, and, as further discussed below, should be denied because LISCO is exempt from the application

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<sup>5</sup> For example, the Cedar Rapids stations carry college football games for the University of Iowa, whereas KTVO carries games for the University of Missouri. It would be a major understatement to say that Iowans have a much stronger preference for viewing Iowa games than Missouri games. This area presents demographics similar to those described in 47 U.S.C. § 341(a), which applies to four counties in the State of Oregon. *See Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Implementation of Section 340 of the Communications Act*, 20 FCC Rcd 17278, 17318-19 (2005). The Kirksville-Ottumwa DMA includes four counties in Iowa (Jefferson, Wapello, Davis, and Van Buren) and seven counties in Missouri. While the four Iowa counties have a total of only 27,810 households, a similar problem exists. The Iowa counties, like the Oregon counties, are orphans in a Missouri-oriented DMA.

<sup>6</sup> Petition at 1.

of Section 76.92(f) due to its status as a small cable system operator serving less than 1,000 subscribers.

## **II. DISCUSSION**

### **A. KTVO's Petition Should be Denied Because LISCO is Exempt From the Application of Section 76.92(f).**

The Commission should deny KTVO's Petition with respect to small cable systems in Fairfield because the FCC's rules provide an exception to the nonduplication rules for cable operators with less than 1,000 customers. Specifically, Section 76.95(a) states, in relevant part, that "[t]he provisions of §§76.92 through 76.94 shall not apply to a cable system serving fewer than 1,000 subscribers."<sup>7</sup> The Commission adopted that exception in the mid-1970s to balance the costs of compliance for small cable systems against the impact on broadcast stations.<sup>8</sup> The Commission was concerned that the costs of equipment and manpower needed to comply with the cable exclusivity rules would have a substantial impact on such systems when viewed in relation to their gross revenues.<sup>9</sup>

The FCC has previously determined that it should deny petitions for waiver of Section 76.92(f) in situations where an exception to that rule applies. In 2010, the FCC considered a

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<sup>7</sup> 47 C.F.R. § 76.95(a). The exception in Section 76.95(a) is available to LISCO because, as discussed above, it only provides cable service to approximately 400 subscribers.

<sup>8</sup> *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions of Broadcast Signals*, Report and Order, 15 FCC Rcd 21688, 21713 (2000) (citing *Amendment of Section 74.1103 of the Commission's Rules and Regulations as it Relates to CATV Systems With Fewer Than 500 Subscribers*, Report and Order, 46 FCC 2d 94 (1994) (adopting an exception for systems with fewer than 500 subscribers from the network non-duplication rules); *Amendment of Subpart F of Part 76 of the Commission's Rules and Regulations With Respect to Network Program Exclusivity Protection by Cable Television Systems; Amendment of Section 74.1103 of the Commission's Rules and Regulations as it Relates to CATV Systems With Fewer than 500 Subscribers*, First Report and Order, 52 FCC 2d 519 (1975) (modifying the small system exception for network non-duplication protection to increase the cut-off to 1,000 subscribers)).

<sup>9</sup> *Id.*

petition for waiver filed by KXAN-TV that is similar to the instant case.<sup>10</sup> In that proceeding, KXAN-TV sought a waiver of the Section 76.92(f) significantly viewed exception to enforce its network nonduplication and syndicated exclusivity rights in Georgetown and Round Rock, Texas.<sup>11</sup> Suddenlink, operator of a cable system serving those communities, opposed KXAN-TV's petition and asserted, among other things, that the Commission should deny the requested waiver because of exceptions contained in the FCC's exclusivity rules. Specifically, Suddenlink argued that the exception to the network nonduplication rules in Section 76.92(b), and the exception to the syndicated exclusivity blackouts set forth in Section 76.106(a),<sup>12</sup> warranted denial of KXAN-TV's petition because a portion of the cable community was within the station's grade B contour.<sup>13</sup> The FCC agreed with Suddenlink, and ruled that the grade B contour overlap with Suddenlink's cable system was dispositive. The Commission found that the exceptions asserted by Suddenlink applied despite KXAN-TV's petition for waiver of Section 76.92(f), and Suddenlink did not need to provide the station with nonduplication and syndicated exclusivity protection in Georgetown.<sup>14</sup>

The instant case is similar to *KXAN, Inc.* As in *KXAN, Inc.*, the petitioner broadcast station, here, KTVO, requests a waiver of the significantly viewed exception to the network nonduplication rule set forth in Section 76.92(f) to enforce its network nonduplication rights. Similar to Suddenlink, LISCO also contends that it is exempt from Section 76.92(f) by operation of an FCC rule. Although the exception applied by the FCC in *KXAN, Inc.* (i.e., grade B service

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<sup>10</sup> See *In re KXAN, Inc.; Petition for Waiver of Sections 76.92(f) and 76.106(a) of the Commission's Rules*, Memorandum Opinion and Order, 25 FCC Rcd 3307 (2010).

<sup>11</sup> *Id.* at 3307.

<sup>12</sup> 47 C.F.R. § 76.106(a).

<sup>13</sup> *KXAN, Inc.*, 25 FCC Rcd at 3312.

<sup>14</sup> *Id.* at 3317-18.

contour overlap) is different than the one at issue here (i.e., less than 1,000 subscribers), the reasoning used by the FCC to deny the waiver of Section 76.92(f) requested by the broadcaster with respect to a cable company that is eligible for the exemption is valid here. Specifically, the Commission determined that even though a broadcaster had petitioned for a waiver of the significantly viewed exception in Section 76.92(f), and the broadcaster has made a successful showing that stations were no longer significantly viewed,<sup>15</sup> cable companies that qualified for the exception to the network nonduplication rule in Section 76.92(f) were not required to provide protection to the broadcaster.

That conclusion is even more compelling when viewing the small cable company exemption to Section 76.92(f) in light of the syndicated exclusivity exemption in the FCC's rules. In *KXAN, Inc.*, the FCC determined that pursuant to the exception in Section 76.106(a) for cable systems that overlapped the grade B contour of the broadcaster, the cable company was not required to provide syndicated exclusivity protection in the relevant community.<sup>16</sup> The small cable company exception for operators with fewer than 1,000 subscribers is also contained in the same section of the Commission's rules. Specifically, Section 76.106(b) states, in relevant part, that "[t]he provisions of §§ 76.101 through 76.105 shall not apply to a cable system serving fewer than 1,000 subscribers."<sup>17</sup> The syndicated exclusivity provisions are set forth in Section

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<sup>15</sup> LISCO does not concede that KTVO has submitted sufficient data to demonstrate that the Cedar Rapids stations are no longer significantly viewed in Fairfield due to the extremely small number of in-tab households surveyed. LISCO does not have the resources to refute KTVO's showing. However, LISCO submits that it is troubling and problematic that a station's significantly viewed status can be overcome so easily by the submission of limited datasets consisting of only four or five households that purport to have standard errors of zero. To that end, LISCO joins in the Opposition filed by Citizens Mutual Telephone Cooperative in this proceeding with regard to that issue.

<sup>16</sup> *KXAN, Inc.*, 25 FCC Rcd at 3318.

<sup>17</sup> 47 C.F.R. § 76.106(b).

76.103.<sup>18</sup> Accordingly, small cable companies are also exempt from requirement to provide syndication protection.

Small cable companies are exempt from the network nonduplication rules in the same manner that they are exempt from the syndicated exclusivity rules. The exemption language in Section 76.95(a) mirrors that in Section 76.106(b), and provides that small cable systems are exempt from the application of the non-duplication rules in Section 76.92.<sup>19</sup> KTVO may qualify for a waiver of Section 76.92(f). That waiver, however, does not affect LISCO's exemption of the network nonduplication rule. The Commission determined in *KXAN, Inc.* that such exemption is not abrogated for qualifying cable systems even if a waiver of the rule is granted to the broadcaster. Consistent with the FCC's decision in *KXAN, Inc.*, the Commission should deny the requested waiver with respect to LISCO's cable operation, and permit the company to continue to carry ABC and CBS affiliates KCRG and KGAN from Cedar Rapids, Iowa, which are the preferred broadcast stations for LISCO customers located in Fairfield, Iowa.

**B. The FCC Should Make Clear that "Significantly Viewed" Status for the Cedar Rapids Stations Continues for Small Cable Operators in Fairfield.**

The FCC's Media Bureau posts on its website a list of television stations that are "significantly viewed" in certain counties and/or communities.<sup>20</sup> Stations on the SV List that are marked with a pound sign (#) have been the subject of application of the Commission's exclusivity rules and are subject to programming deletions in the indicated communities.<sup>21</sup> For those communities that are subject to the FCC's exclusivity rules, the Media Bureau will list

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<sup>18</sup> 47 C.F.R. § 76.103.

<sup>19</sup> See 47 C.F.R. § 76.95(a) ("The provisions of §§ 76.92 through 76.94 shall not apply to a cable system serving fewer than 1,000 subscribers.").

<sup>20</sup> See *Significantly Viewed List*, <http://transition.fcc.gov/mb/significantviewedstations120611.pdf> (viewed July 6, 2012) ("SV List").

<sup>21</sup> *Id.* at 1.

them by name. By way of example, KTXL in Butte County, Sacramento, CA is a significantly viewed station. However, that station is marked with a pound sign, along with an explanation that the “[a]ffected community is Chico, California”,<sup>22</sup> i.e., KTXL is no longer considered to be significantly viewed in that area. The Cedar Rapids stations, KGAN and KCRG, are currently on the FCC’s SV List without any qualifications.

If KTVO’s Petition is granted, and the FCC determines that small cable systems in Fairfield are exempt from the requested waiver by operation of Section 76.95(a), should the FCC revise the SV List with the standard designation that Fairfield is now an “affected community,” LISCO would still lose the war to keep the Cedar Rapids stations by operation of the network affiliation agreements for KCRG and KGAN. As mentioned above, it is LISCO’s understanding that the network affiliation agreements for those stations would preclude them from providing programming to LISCO should they no longer be considered significantly viewed in Fairfield. Saddling Fairfield with the “affected community” designation would trigger the national ABC and CBS networks’ right to terminate LISCO’s retransmission consent agreements with their Cedar Rapids affiliates since Fairfield would be carved out of the FCC’s SV List.

In order to avoid providing LISCO with a hollow victory should the Commission determine that an exemption from KTVO’s requested waiver for small cable operators in the Fairfield community is warranted, LISCO requests that the FCC either (1) include the following explanatory footnote of the carve out for small cable systems when it revises the SV List to denote that KGAN and KCRG are subject to programming deletions in Fairfield: “Affected community is Fairfield, Iowa, except for small cable companies that qualify for the exemption under 47 C.F.R. § 76.95(a)”; or (2) state in its order in this proceeding that KGAN and KCRG

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<sup>22</sup> *Id.* n.1.



will continue to have significantly viewed status in Fairfield with respect to small cable companies that qualify for the exemption in Section 76.95(a).

### **III. CONCLUSION**

Wherefore, for the foregoing reasons, LISCO requests that the Commission deny KTVO's Petition to the extent necessary, and rule that small cable companies that qualify for the exemption under Section 76.95(a)<sup>23</sup> are not required to provide nonduplication protection to KTVO-TV in the community of Fairfield, Iowa, and to the extent necessary, that LISCO is also not required to provide syndicated exclusivity protection to KTVO-TV pursuant to Section 76.106(b).<sup>24</sup> LISCO further requests that, should the Commission grant the Petition, the Media Bureau's SV List be revised subject to the qualifications as discussed above, or that the FCC's order state that KGAN and KCRG will continue to have significantly viewed status in Fairfield with respect to small cable companies. LISCO further requests such other relief as appropriate that are in the public interest.

Respectfully submitted,



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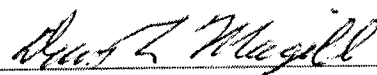
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<sup>23</sup> 47 C.F.R. § 76.95(a).

<sup>24</sup> 47 C.F.R. § 76.106(b). Although KTVO did not request a waiver of the syndicated exclusivity rules set forth in Section 76.103, LISCO requests that the Commission rule that LISCO is not required to provide syndicated exclusivity protection to the extent that Section 76.103 is implicated in this proceeding.

**CERTIFICATION**

I, David Magill, hereby certify under penalty of perjury that I am the Vice President, Administration and Legal for Local Internet Service Company, Inc.; that I have read the foregoing document and know the contents thereof; and that the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true.



David Magill  
Vice President, Administration and Legal  
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Date

## CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, a legal administrative assistant with Venable LLP, certify under penalty of perjury that on this 9th day of July, 2012, a true and correct copy of the foregoing document was served via first class mail, postage prepaid, on the following:

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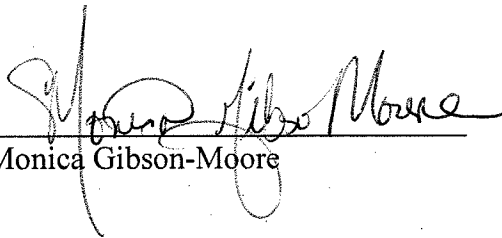
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